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10/603,516	06/25/2003	Steven J. Zaharias	BEA920030014US1	3247

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LAW OFFICES OF MICHAEL DRYJA
1474 N COOPER RD #105-248
GILBERT, AZ 85233

EXAMINER	
COULTER, KENNETH R	
ART UNIT	**PAPER NUMBER**
2141	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/603,516	ZAHARIAS, STEVEN J.	
	Examiner	Art Unit	
	Kenneth R. Coulter	2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-26 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-26 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on 25 June 2003 is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 21 – 26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Independent claim 21 is directed to software that is not implemented on a computer-readable storage medium.

Data structures not claimed as embodied in computer-readable media are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention which permit the data structure's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1 – 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Almeida et al. (U.S. Pat. No. 7,219,343) (Firmware Update Mechanism in a Multi-Node Data Processing System).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

4.1 Regarding claim 1, Almeida discloses a method for controlling a merge process of a plurality of nodes into a single-partition merged system comprising:

communicating by a user with a service processor of a predetermined boot node of the plurality of nodes to enter partition configuration information for the single-partition

merged system (Abstract; col. 1, lines 52 – 61 "I/O resources that enables user interaction");

storing the partition configuration information by the service processor of the boot node (Abstract; Figs. 1, 2; col. 4, lines 6 – 34);

transmitting the partition configuration information for the single-partition merged system from the service processor of the boot node to service processors of predetermined secondary nodes of the plurality of nodes (Abstract; Figs. 1, 2; col. 1, line 52 – col. 2, line 23); and

storing the partition configuration information by the service processor of each of the secondary nodes (Abstract; Figs. 1, 3; col. 4, lines 6 – 34).

4.2 Per claim 2, Almeida teaches the method of claim 1, wherein communicating by the user with the service processor of the boot node comprises communicating by the user with the service processor of the boot node without using a dedicated console (Fig. 1; col. 3, lines 22 – 37; col. 4, lines 20 – 34).

4.3 Regarding claim 3, Almeida discloses the method of claim 1, wherein communicating by the user with the service processor of the boot node comprises utilizing a web page user interface to communicate with the service processor of the

boot node (Fig. 1; col. 4, lines 48 – 53 "internet"; col. 3, lines 22 – 37; col. 4, lines 20 – 34).

4.4 Per claim 4, Almeida teaches the method of claim 1, wherein communicating by the user with the service processor of the boot node comprises utilizing a console management application to communicate with the service processor of the boot node (Fig. 1; col. 3, lines 22 – 37; col. 4, lines 20 – 34).

4.5 Regarding claim 5, Almeida discloses the method of claim 1, further comprising, at power-up of any of the plurality of nodes: conveying the power-up to the service processor of the boot node (Figs. 2, 3; col. 5, lines 13 – 27 "each local node will reset system power"); and, starting up the single-partition merged system by the service processor of the boot node, including transmitting commands from the service processor of the boot node to the service processors of the secondary nodes to start up (Abstract; Figs. 2, 3; col. 5, lines 13 – 27).

4.6 Per claim 6, Almeida teaches the method of claim 5, wherein power-up of any of the plurality of nodes comprises *manual actuation* of a control on any of the plurality of nodes by the user (Abstract; Figs. 2, 3; col. 1, lines 52 – 61 "**I/O resources** that enables **user interaction**."; col. 5, lines 13 – 27).

4.7 Regarding claim 7, Almeida discloses the method of claim 5, wherein power-up of any of the plurality of nodes comprises receipt of a power-up command by any of the plurality of nodes (Abstract; Figs. 2, 3; col. 5, lines 13 – 27).

4.8 Per claim 8, Almeida teaches the method of claim 1, further comprising, at power-down of any of the plurality of nodes:

conveying the power-down to the boot node; shutting down the single-partition merged system by the boot node, including transmitting commands from the boot node to the secondary nodes to shut down (Abstract; Figs. 2, 3; col. 5, lines 13 – 27).

4.9 Regarding claim 9, Almeida discloses the method of claim 8, wherein power-down of any of the plurality of nodes comprises manual actuation of a control on any of the plurality of nodes by the user (Abstract; Figs. 2, 3; col. 5, lines 13 – 27).

4.10 Per claim 10, Almeida teaches the method of claim 8, wherein power-down of any of the plurality of nodes comprises receipt of a power-down command by any of the plurality of nodes (Abstract; Figs. 2, 3; col. 5, lines 13 – 27).

4.11 Regarding claim 11, Almeida discloses the method of claim 1, further comprising, at a reset of any of the plurality of nodes: conveying the reset to the boot node; resetting the single-partition merged system by the boot node, including transmitting commands from the boot node to the secondary nodes to reset (Abstract; Figs. 2, 3; col. 2, lines 53 – 64; col. 3, line 59 – col. 4, line 19).

4.12 Per claim 12, Almeida teaches the method of claim 11, wherein reset of any of the plurality of nodes comprises manual actuation of a control on any of the plurality of nodes by the user (Abstract; Figs. 2, 3; col. 1, lines 52 – 61 "**I/O resources** that enables **user interaction**."; col. 2, lines 53 – 64; col. 3, line 59 – col. 4, line 19).

4.13 Regarding claim 13, Almeida discloses the method of claim 11, wherein reset of any of the plurality of nodes comprises receipt of a reset command by any of the plurality of nodes (Abstract; Figs. 2, 3; col. 2, lines 53 – 64; col. 3, line 59 – col. 4, line 19).

4.14 Per claims 14 – 26, the rejection of claims 1 – 13 under 35 USC 102(e) (paragraphs 4.1 – 4.13) applies fully.

5. Claims 1 – 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Lin (U.S. Pub. No. 2002/0049966) (Method for Software Installation and Pre-Setup).

5.1 Regarding claim 1, Lin discloses a method for controlling a merge process of a plurality of nodes into a single-partition merged system comprising:

communicating by a user with a service processor of a predetermined boot node of the plurality of nodes to enter partition configuration information for the single-partition merged system (Abstract "The computer explodes the OS image file corresponding to the OS chosen by the user from the second partition to the merged partition."; Fig. 4; paragraphs 16 – 18);

storing the partition configuration information by the service processor of the boot node (Figs. 1, 4; paragraphs 16 – 18);

transmitting the partition configuration information for the single-partition merged system from the service processor of the boot node to service processors of predetermined secondary nodes of the plurality of nodes (Abstract; Fig. 4; paragraphs 16 and 32); and

storing the partition configuration information by the service processor of each of the secondary nodes (Figs. 1, 4; paragraphs 16, 17, 26, 32).

5.2 Per claim 2, Lin does not explicitly teach the method of claim 1, wherein communicating by the user with the service processor of the boot node comprises communicating by the user with the service processor of the boot node without using a dedicated console. However, Lin discloses computers connected to a network (Fig. 1, item 14; paragraph 25). Personal computers inherently have input devices that can be utilized for a variety of purposes.

5.3 Regarding claim 3, Lin does not explicitly disclose the method of claim 1, wherein communicating by the user with the service processor of the boot node comprises utilizing a web page user interface to communicate with the service processor of the boot node. However, Lin discloses computers connected to a network (Fig. 1, items 12, 16, 14; paragraph 25). The network 16 could easily be the Internet, wherein users on computers 14 communicate utilizing a web page.

5.4 Per claim 4, Lin teaches the method of claim 1, wherein communicating by the user with the service processor of the boot node comprises utilizing a console management application to communicate with the service processor of the boot node (Fig. 4; paragraphs 18, 25, 29 "application programs 21").

5.5 Regarding claim 5, Lin discloses the method of claim 1, further comprising, at power-up of any of the plurality of nodes: conveying the power-up to the service processor of the boot node (Abstract; paragraphs 16, 30, 33, 35); and, starting up the single-partition merged system by the service processor of the boot node, including transmitting commands from the service processor of the boot node to the service processors of the secondary nodes to start up (Abstract; paragraphs 16, 17, 32).

5.6 Per claim 6, Lin teaches the method of claim 5, wherein power-up of any of the plurality of nodes comprises manual actuation of a control on any of the plurality of nodes by the user (Abstract; paragraphs 16, 30, 33, 35 "user powers on the computer 14).

5.7 Regarding claim 7, Lin discloses the method of claim 5, wherein power-up of any of the plurality of nodes comprises receipt of a power-up command by any of the plurality of nodes (Abstract; paragraphs 16, 30, 33, 35).

5.8 Per claim 8, Lin teaches the method of claim 1, further comprising, at power-down of any of the plurality of nodes:

conveying the power-down to the boot node; shutting down the single-partition merged system by the boot node, including transmitting commands from the boot node

to the secondary nodes to shut down (Abstract; paragraphs 16, 30, 33, 35) (powering down occurs inherently).

5.9 Regarding claim 9, Lin discloses the method of claim 8, wherein power-down of any of the plurality of nodes comprises manual actuation of a control on any of the plurality of nodes by the user (Abstract; paragraphs 16, 30, 33, 35).

5.10 Per claim 10, Lin teaches the method of claim 8, wherein power-down of any of the plurality of nodes comprises receipt of a power-down command by any of the plurality of nodes (Abstract; paragraphs 16, 30, 33, 35).

5.11 Regarding claim 11, Lin discloses the method of claim 1, further comprising, at a reset of any of the plurality of nodes: conveying the reset to the boot node; resetting the single-partition merged system by the boot node, including transmitting commands from the boot node to the secondary nodes to reset (Abstract; Fig. 4; paragraphs 17, 31 – 33 "reboots").

5.12 Per claim 12, Lin teaches the method of claim 11, wherein reset of any of the plurality of nodes comprises manual actuation of a control on any of the plurality of nodes by the user (Abstract; Fig. 4; paragraphs 17, 31 – 33).

5.13 Regarding claim 13, Lin discloses the method of claim 11, wherein reset of any of the plurality of nodes comprises receipt of a reset command by any of the plurality of nodes (Abstract; Fig. 4; paragraphs 17, 31 – 33, 36).

5.14 Per claims 14 – 26, the rejection of claims 1 – 13 under 35 USC 102(b) (paragraphs 5.1 – 5.13) applies fully.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth R. Coulter whose telephone number is 571 272-3879. The examiner can normally be reached on M - F, 7:30 am - 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KENNETH R. COULTER
PRIMARY EXAMINER

krc